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state, and had acquired one in another state, the burden was thrown upon the state to show that deceased, on returning to the state, intended to abandon the domicile acquired in the other state and to establish one in the state, notwithstanding that an assessment of taxes is presumed to be legal and valid until the contrary is affirmatively shown; a domicile being presumed by law to exist until another is acquired elsewhere.

6. Taxation (§ 500*)—Evidence Held Not to Overcome Positive Establishment of Domicile in Another State.—Where it was affirmatively established that the deceased owner of the property had abandoned her domicile in the state, and had acquired a domicile elsewhere, and then returned to the state, evidence held insufficient to overcome the presumption that the deceased was domiciled in the other state at the time of her death.

Error to Hustings Court of Richmond.

Proceeding by Robert H. Talley, administrator of Mrs. Ellen Vance, deceased, against the Commonwealth. From an order making an assessment of taxes, the petitioner brings error. Reversed.

R. H. Talley, of Richmond, for plaintiff in error.

John R. Saunders, Atty. Gen., and *J. D. Hank, Jr., Asst. Atty Gen.*, for the Commonwealth.

MERCHANTS' & MINERS' TRANSP. CO. *v.* L. J. UPTON & CO.,

June 10, 1920.

[103 S. E. 616.]

1. Carriers (§ 123*)—Liable for Loss Where Negligence Concurred with Act of God.—While a carrier is exempt from liability if the act of God is the proximate and sole cause of loss, the carrier is liable if its negligence concurs in and contributes to the loss, as where negligent delay in a shipment produces a condition where act of God causes injury.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 680, 681.]

2. Carriers (§ 136*)—Whether Carrier's Negligence Contributed to Act of God Held for Jury.—Where the defendant carrier on receipt of a shipment of potatoes in December agreed to immediately deliver them to connecting carriers, but failed to do so for nearly a week, and the potatoes were damaged by freezing, the question whether the carrier's negligent failure to make immediate delivery

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

of the shipment as agreed, concurred with the act of God, so as to make it liable held under the evidence for the jury.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 680, 681.]

3. Carriers (§ 176*)—Carrier Not Liable for Delay in Delivering to Connecting Carrier Failing to Call for Same.—Defendant carrier is not liable for failure to deliver a shipment of potatoes to a connecting carrier, where it was informed by plaintiff that connecting carrier would send its steamer for the shipment, and the connecting carrier, knowing that the shipment was ready, failed to do so.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 681, 682.]

Error to Circuit Court of City of Norfolk.

Action by L. J. Upton & Co., Incorporated, against the Merchants' & Miners' Transportation Company. There was a judgment for plaintiff, and defendant brought error, and plaintiff assigned cross-errors. Affirmed.

Hughes, Little & Seawell, of Norfolk, for plaintiff in error.
E. R. F. Wells, of Norfolk, for defendant in error.

CHILES v. BOWYER et al.

June 10, 1920.

[103 S. E. 619.]

1. Evidence (§ 277*)—Husband's Admissions as to Wife's Interest in Land Admissible as Declarations against Interest.—Evidence of husband's admissions that wife had a half interest in land, and assurances to wife that land had been conveyed to both of them, held admissible in action following husband's death, in which it was claimed by husband's heirs, as against wife's heirs, that land had been conveyed to wife by mistake, being statements in disparagement of title.

2. Reformation of Instruments (§ 45 (4)*)—Evidence Held Not to Show That Wife Was Named with Husband as Grantee by Mistake.—In action by plaintiff, claiming under husband, against wife's heirs, to reform deed conveying land to husband and wife, on grounds that wife's name had been included by mistake, evidence held insufficient to prove that wife was named as grantee by mistake, in view of significance of deed itself.

3. Frauds, Statute of (§ 106 (1)*)—Undelivered Deed Held Enforceable by Grantee in Possession as a Contract.—Where deed executed pursuant to parol contract was signed, sealed, and acknowledged, and constituted a true expression of the contract between the parties,

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.